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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,654	07/28/2003	Morton Beroza	MR3277-2/CIP	4431

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EXAMINER

ROWAN, KURT C

ART UNIT PAPER NUMBER

3643

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/627,654

Applicant(s)

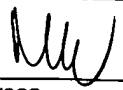
BEROZA ET AL.

Examiner

Kurt Rowan

Art Unit

3643



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

Art Unit: 3643

DETAILED ACTION

Claim Objections

1. Claim 16 is objected to because of the following informalities: claim 16 does not end in a ".". Appropriate correction is required.

Double Patenting

2. Claims 1-16 of this application conflict with claims 7-23 of Application No. 10/627,703. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 3643

2. Claims 1-16 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7-23 of copending Application No. 10/627,703. Although the conflicting claims are not identical, they are not patentably distinct from each other because they are obvious in view of the copending claims. Both are drawn to a method of remotely detecting an insect of a preselected species. Both recite establishing a central monitoring station and at least one remote detection station. Both acquire a sensed biometric signal. Both recite analyzing the sensed signal. Both recite transmitting the signal from the remote station to the central station. The present application discloses receiving the positive signal at the central monitoring station and determining at the central monitoring station a prevalence of the target species. Both of the steps are immediately envisioned by the 10/627,703 application since the positive signal is transmitted it will be received by the central monitoring station and one of the reasons to send the positive signal to the central monitoring station would be to determine the number of target species. Hence, it would have been obvious to keep track of the number of target species at the central monitoring station.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

Art Unit: 3643

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Su (US 6,052,066).

The patent to Su shows establishing a central monitoring station and at least one remote monitoring station (sensors) as shown in Fig. 1. Su shows acquiring a sensed biometric signal at the remote monitoring station which is the insect activating the sensor in some way. Su transmits the signal from the remote station and receives that signal at the central monitoring station. In reference to claim 1, it is not clear if Su analyses the sensed biometric signal of the targeted insect at the site and then sends a signal to the central monitoring station or automatically sends a signal. At any rate, it would have been obvious to analyze the signal at the remote detection station to avoid false positive signals which would then entail an operator making a trip to check that sensor. Note that Su discloses using computer software in column 4, lines 19-20 to filter out overlapped pest and then identifies the pest. In reference to claims 2 and 6, Su discloses acoustic emission devices which would produce an acoustic signal. In reference to claim 3, shows a detector which acts as a coarse signal detector. Inherently Su has a power control device. Su shows an analog to digital signal converter as disclosed in column 5, lines 26-27. It is within the purview of one skilled in the art to employ a digital signal processor with an analog to digital signal converter. In reference to claim 4, Su clearly contemplates polling a remote station from the central monitoring station to check the operation integrity thereof as discussed in column 5, line 66 to column 6, line 9 by using an analog test signal. In reference to claim 5, Su does

Art Unit: 3643

not disclose a radio frequency transmitter or an antenna to send the signal to the central monitoring station, but it would have been obvious to employ a radio frequency transmitter and an antenna to send the signal without cables or lines. The examiner takes Official Notice that radio frequency transmitters and antennas are old and well known in the art and that it would have been obvious to employ them in place of cables or telephone lines for the purpose of ease of use such as in place where the cable run would be very long. In reference to claim 7, Su discloses a trap 30 in column 3, line 40. Su discloses in column 7, lines 26-36, that other detectors could be employed such as acoustic emission or a digital balance. In reference to claim 8, see the rejection of claim 2, above. In reference to claim 9, Su discloses a pheromone attractant in column 3, line 45. In reference to claim 10, see the rejection of claim 3, above. In reference to claim 11, see the rejection of claim 4, above. In reference to claims 12, 13, Su discloses a remote electronic beeper, but it would have been obvious to employ a signal with the positive alert signal to tell the operator which station is sending the signal. In reference to claims 14, 15, Su employ computer software to analyze the sensed biometric signal as disclosed in column 4, lines 19-21 which can be considered to be executing a sequence of processing steps stored in a computer readable medium. In reference to claim 16, it is not clear if Su includes the executes the processing steps in the digital signal processor or not, but it would have been obvious to do so since the function is the same and no unexpected results were shown.

Art Unit: 3643

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Otomo and Vejvoda show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on 703 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR